

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-3. General Child Care Facility Rules Inspection and Enforcement.

R430-3-1. Legal Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. It provides criteria to ensure that sanctions are applied consistently and appropriately.

R430-3-2. [Purpose.

~~———— This rule delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. These provisions provide criteria to ensure that sanctions are applied consistently and appropriately.]~~**Informal Discussions.**

Independent of any administrative proceeding, a licensee may request at any time to discuss a Department decision with Department staff.

[R430-3-3. Statement of Findings.

~~———— (1) The Department may inspect each licensed facility at least once during each year to determine compliance with the applicable rules.~~

~~———— (2) If the Department has reason to believe that a child care facility is in violation of Title 26, Chapter 39, or any of the rules governing child care, the Department shall serve a written Statement of Findings to the licensee or his designee.~~

~~———— (a) All Statements for Class I and III violations shall be served within 24 hours.~~

~~———— (b) All Statements for Class II violations shall be served within ten working days.~~

~~———— (3) Violations shall be classified as Class I, Class II, and Class III violations.~~

~~———— (a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which presents imminent danger to children in the facility, or which presents a clear hazard to the public health.~~

~~———— (b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which has a direct or immediate relationship to the health, safety, or security of children in a child care facility.~~

~~———— (c) "Class III Violation" means establishing, conducting, managing, or operating a child care facility regulated under Title 26, Chapter 39 and this rule without a license or with an invalid license.~~

~~———— (4) The Department may cite a facility with one or more violations.~~

~~———— (5) The Statement of Findings shall include:~~

~~———— (a) The statute or rule violated,~~

~~———— (b) a description of the violation,~~

~~———— (c) the facts which constitute the violation, and~~

~~———— (d) the classification of the violation.~~

R430-3-4. Plan of Correction.

~~———— (1) A child care facility shall, within 14 calendar days of the receipt of a Statement of Findings, submit a plan outlining the following:~~

~~———— (a) How the required corrections shall be accomplished.~~

~~———— (b) Who is the responsible person to monitor whether the correction is accomplished;~~

- ~~—— (c) The date by which the facility shall make the correction.~~
- ~~—— (2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the plan of correction.~~
- ~~—— (3) If the Department rejects the Plan of Correction, the Department shall notify the facility of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. The facility shall submit a revised plan of correction within 14 days of receipt of a request.~~
- ~~—— (4) If a facility corrects a violation before the deadline for submission and approval of a Plan of Correction, the facility shall submit a report of correction.~~
- ~~—— (5) If a facility seeks review of the statement of findings, it is not required to submit a plan of correction during the review period.~~

~~R430-3-5. Corrective Action Required for Class I Violations.~~

- ~~—— (1) If the Department issues a Class I violation to a licensed or unlicensed child care facility, the facility shall abate or eliminate the situation, condition, or practice constituting the Class I violation within a fixed period of time for the correction that is specified in the Plan of Correction.~~
- ~~—— (2) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.~~

~~R430-3-6. Corrective Action Required for Class II Violations.~~

- ~~—— (1) A facility served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time approved by the Department, but not to exceed 60 days from the issue date.~~
- ~~—— (2) The facility shall submit justification to the Department for corrections that take longer than 60 days, for consideration of approval by the Department.~~
- ~~—— (3) The Department may issue a conditional license or impose sanctions to the license or close the facility if a facility is cited with a Class II violation and fails to take required corrective action.~~

~~R430-3-7. Failure to Correct Class III Violations.~~

- ~~—— (1) If the Department serves a Statement of Findings for a Class III violation, the facility shall file a Request for Agency Action/License Application form within 14 days and pay the required licensing fee.~~
 - ~~—— (a) If the facility fails to submit the request as specified, the Department shall order closure of the facility.~~
 - ~~—— (b) If the Executive Director determines that the lives, health, or safety of the children cannot be adequately assured pending application and licensure or an adjudicative proceeding to determine whether a license is necessary, he may order immediate closure of the facility.~~

~~R430-3-8. Sanction Action on License.~~

- ~~—— (1) The Department may initiate an action against a child care facility pursuant to Section 26-39-108. That action may include:~~
 - ~~—— (a) Denial or revocation of a license if the facility fails to comply with R430-6, R430-60, R430-90, or R430-100, exhibits evidence of aiding, abetting or permitting the commission of any~~

illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the children under its care.

- (b) Restriction or prohibition on new admissions to a child care facility for:
- (i) violation of any provision under these rules; or
- (ii) permitting, aiding, or abetting the commission of any illegal act in the child care facility.
- (c) Distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensure rules or illegal conduct permitted by the facility and the agency action taken.
- (d) Placement of Department employees or agents as monitors in the facility until corrective action is completed.
- (e) Assessment of the cost incurred by the Department in placing the monitors.
- (f) Assessment of monetary penalties that must be paid by the facility.

R430-3-9. Immediate Closure of Facility.

- (1) The Department may order the immediate closure of any licensed or unlicensed child care facility if the health or safety of the children is in immediate jeopardy during the course of adjudicative proceedings.
- (2) If the Department orders immediate closure of a facility, it shall serve an order that the facility is ordered closed as of a given date.
- (3) The Department may maintain an action in the name of the state for injunction or other process against the child care facility which disobeys a closure order.
- (4) The Department may assist in relocating children to another licensed facility.

R430-3-10. Statutory Penalties.

—— A violation of this rule is punishable by administrative civil monetary penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.]

R430-3-3. Definitions.

- (1) "Deficiency" means a violation of any rule provision.
- (2) "Department" means the Department of Health.
- (3) "Facility" means the building and adjacent property, equipment, and supplies devoted to the child care operation.
- (4) "High Risk for Harm" means there is the potential for serious injury to a child.
- (5) "Inspection" means observation, measurement, review of documentation, and interview to determine compliance with rules.
- (6) "Investigation" means an in-depth inspection of specific alleged rule violations.
- (7) "Licensee" means the legally responsible person, people, program, or agency that hold a valid Department of Health issued child care license.
- (8) "Statement of Findings" means a statement of one or more specific rule violations which, if not corrected, will prompt the Department to take disciplinary action.
- (9) "Technical Assistance" means the noting of a rule violation and providing information on how to come into compliance.

R430-3-4. Compliance Assurance.

(1) The Department shall conduct an announced and unannounced inspection of each licensed facility to:

- (a) determine compliance with rules;
- (b) verify compliance with conditions placed on a license in a conditional status; and
- (c) verify compliance with variance conditions.

(2) If allegations of rule violations are reported to the Department, the Department shall conduct a complaint investigation.

- (a) The Department shall not investigate complaints from an anonymous source.
- (b) The Department shall inform complainants that they are guilty of a class B misdemeanor if they are giving false information to the Department with the purpose of inducing a change in a licensing or certification status.

R430-3-5. Technical Assistance.

If the Department finds a deficiency that does not pose a high risk for harm:

- (1) the Department shall offer technical assistance; and
- (2) the licensee shall provide a date by which correction must be made.
 - (a) The correction date shall not exceed 30 days from the date of the inspection.
 - (b) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

R430-3-6. Statement of Findings.

(1) If a licensee does not correct a deficiency by the correction date provided in R430-3-5(2), the Department shall issue a statement of findings that includes:

- (a) a citation to the violated rule;
- (b) a description of the violation with the facts which constitute the violation; and
- (c) the date by which correction must be made.
 - (i) The correction date shall not exceed 30 days from the date of the subsequent inspection.
 - (ii) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

(2) If a licensee violates a rule for which the licensee previously received technical assistance, the Department shall issue a statement of findings that includes:

- (a) a citation to the violated rule;
- (b) a description of the violation with the facts which constitute the violation; and
- (c) the date by which the correction must be made.
 - (i) The correction date shall not exceed 30 days from the date of the inspection.
 - (ii) The licensee may request a correction date of more than 30 days if circumstances outside the licensee's control prevent compliance within 30 days.

(3) If a licensee violates a rule that creates a high risk for harm, the Department shall issue a statement of findings that includes:

- (a) a citation to the violated rule;
- (b) a description of the violation with the facts which constitute the violation; and
- (c) the date by which the correction must be made which shall not exceed 30 days from the date of the inspection.

R430-3-7. Directed Plan of Correction

The Department may issue a directed plan of correction that specifies how and when cited findings will be corrected if a licensee:

- (1) fails to comply by the correction date specified in R430-3-6; or
- (2) violates the same rule provision more than three times within any 12-month period.

R430-3-8. Conditional Status.

(1) The Department may place a license on a conditional status to assist the licensee to comply with rules if the licensee:

- (a) fails to comply with rules by correction date specified in R430-3-6;
- (b) violates the same rule provision more than three times within any 12-month period;

or

- (c) violates multiple rule provisions.

(2) The Department shall establish the length of the conditional status.

(3) The Department shall set the conditions that the licensee must satisfy to remove the conditional status.

(4) The Department shall return the license to a standard status when the licensee meets the conditions of the conditional status.

R430-3-9. Revocation.

(1) The Department may revoke a license if the licensee:

- (a) fails to meet the conditions of a conditional status;
- (b) violates the Child Care Licensing Act;
- (c) provides false or misleading information to the Department;
- (d) refuses to submit or make available to the Department any written documentation required to do an inspection or investigation;

(e) refuses to allow authorized representatives of the Department access to a facility to ascertain compliance to rules;

- (f) fails to provide, maintain, equip, and keep the facility in a safe and sanitary condition;

or

(g) has committed acts that would exclude a person from being licensed or certified under R430-6.

(2) The Department may set the effective date of the revocation such that parents are given 14 days to find other care for children.

R430-3-10. Immediate Closure.

The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and which require immediate action to protect their health or safety.

R430-3-11. Death or Serious Injury of a Child in Care.

The Department may order a provider to restrict or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending the review of the Child Fatality Review Committee or receipt of a medical report determining the probable cause of death or injury.

R430-3-12. Operating without a License.

If a person is providing care in lieu of care ordinarily provided by parents for more than four unrelated children without the appropriate license or certificate, the Department may:

- (1) issue a cease and desist order; or
- (2) allow the person to continue operation if:
 - (a) the person was unaware of the need for a license or certificate;
 - (b) conditions do not create a clear and present danger to children in care; and
 - (c) the person agrees to apply for the appropriate license or certificate within 30 days of notification by the Department.

R430-[2-16]3-13. Deemed Status.

The Department may grant deemed status to facilities accredited by the National Academy of Early Childhood Programs or National Accreditation Commission for Early Care and Education Programs, National Association for Family Child Care or National Early Childhood Program Accreditation in lieu of the ~~[annual-]~~licensing inspection by the Department upon completion of the following:

- (1) As part of the ~~[annual-]~~license renewal process, the licensee ~~[shall identify]~~must indicate on the [Request for Agency Action/A]license application its desire to[:
 - ~~_____ (a) Initiate deemed status;~~
 - ~~_____ (b) C]initiate or continue deemed status[, or~~
 - ~~_____ (c) [R]relinquish deemed status during the licensing year of application].~~
- (2) This request constitutes written authorization for the Department to attend the provider's exit conference with the accrediting body.
- (3) Upon receipt from the accrediting agency, the ~~[facility]~~licensee shall submit copies of the following:
 - (a) ~~[A]~~accreditation ~~[C]~~certificate;
 - (b) ~~[S]~~survey reports and recommendations; and
 - (c) ~~[P]~~progress reports of all corrective actions underway or completed in response to the accrediting body's action or Department recommendations.
- (4) The Department may ~~[assert]~~exercise its regulatory responsibility and authority [pursuant to applicable state and federal statutes, including:
 - ~~_____ (a) annual and follow up inspections;~~
 - ~~_____ (b) investigation of complaints, and~~
 - ~~_____ (c) verification of the following:~~
 - ~~_____ (i) violations of state law, rule or standard identified in the accrediting body's survey; or~~
 - ~~_____ (ii) violations of state law, rule or standard identified in the Department's survey]~~regardless of the facility's deemed status.[
- ~~_____ (5) The Department may annually conduct validation inspections of facilities accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the licensing rules, the provisions relating to an annual inspection shall apply].~~

R430-3-14. Variances.

(1) If a licensee or applicant cannot comply with a rule but can meet the intent of the rule in another way, he may apply for a variance to that rule. The Department cannot issue a variance to the background screening requirements of Section 26-39-107 and R430-6.

- (2) A licensee or applicant requesting a variance shall submit a completed variance request form to the Department. The requests must include:
- (a) the name and address of the facility;
 - (b) the rule from which the variance is being sought;
 - (c) the time period for which the variance is being sought;
 - (d) a detailed explanation of why the rule cannot be met;
 - (e) the alternative means for meeting the intent of the rule;
 - (f) how the health and safety of the children will be ensured; and
 - (g) other justification that the licensee or applicant desires to submit.
- (3) The Department may require additional information before acting on the request.
- (4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.
- (5) If the Department approves the request, the licensee shall keep a copy of the approved variance on file in the facility and make it publicly available.
- (6) The Department may grant variances for up to 12 months.
- (7) The Department may impose health and safety conditions upon granting a variance.
- (8) The Department may revoke a variance if:
- (a) the provider is not meeting the intent of the varied rule by alternative means;
 - (b) the facility fails to comply with the conditions of the variance; or
 - (c) a change in statute, rule, or case law affects the justification for the variance.

R430-3-15. Statutory Penalties.

- (1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to \$5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.
- (2) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for unlicensed or uncertified child care.
- (3) The Department may impose an administrative civil money penalty of up to \$100 per day to a maximum of \$10,000 for each violation of the Child Care Licensing Act or the rules promulgated pursuant to that act.
- (4) Any person intentionally making false statements or reports to the Department may be fined \$100 for each violation to a maximum of \$10,000.
- (5) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, revoke, condition, or refuse to renew a license or certificate.
- (6) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.
- (7) Within 10 working days after receipt of a negative licensing action or imposition of a fine, each child care program must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the negative licensing action.

KEY: child care facilities

[~~June 20, 2002~~]2005

Notice of Continuation December 19, 2002